IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25334 of 2006
WITH
CIVIL APPLICATION NO.908 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MANSUKHBHASI VALJIBHAI KOTECHA
Versus
STATE OF GUJARAT AND OTHERS

==========

Appearance :
Mr BM Mangukiya for the Petitioners
Mr Krunal Pandya, AGP for the respondents

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 08/05/2007

COMMON ORAL JUDGMENT:

RULE. Mr Krunal Pandya, learned Assistant Government Pleader waives service of Rule for the respondents. At the request of the learned

counsel for the parties, the matter is taken up for final hearing today along with the Civil Application.

The petitioner has challenged the action of the respondents of sealing his restaurant on the ground that the requisite permission/licence has not been obtained by the petitioner. The petitioner is having his restaurant adjoining to the National High Way running between Chhotila and Rajkot. The restaurant is at Chhotila and it is named Raghuvanshi Parotha House.

I have heard Mr B.M.Mangukia for the petitioner and Mr Krunal Pandya, learned Assistant Government Pleader for the respondents. It is submitted by Mr Mangukia that under the provisions of Clause (x)(a) of Section 33 of the Bombay Police Act if the restaurant or eating house is not possessing the registration including grant of certificate of registration, etc., the only action that can be taken against him is in accordance with Section 131A of the Act. I have perused the said Section which provides for the action that maybe taken if somebody fails to obtain the licence under the Act with regard to eating house. It says that if the person is found guilty of committing the breach can be punished with fine, which may extend to Rs.50. Mr Mangukiya has based his submission on this Section and has contended that, at the most, the petitioner can be asked to pay fine of Rs.50 and that too upon complaint being filed before the concerned Magistrate and upon Magistrate finding him guilty of committing the offence. He has further submitted that the other persons who are similarly situated have been granted regularisation by the concerned authority and the petitioner has been denied the same. Therefore, there is hostile discrimination. Lastly, he has submitted that against the order of the Collector refusing the regularisation the petitioner had preferred appeal before the Secretary, Revenue Department and the Joint Secretary by the order

dated 27.12.2006 remanded the matter for reconsideration making certain observations in favour of the petitioner.

As against that, Mr Pandya has submitted that the petitioner is not possessing the licence and, therefore, the action taken against him is valid. He has further submitted that the petitioner has also committed encroachment on the Government land and therefore the authority was within its limits to seal the premises of the restaurant. He has lastly submitted that no case which is made out by the petitioner for grant of reliefs prayed for and the petition deserves dismissal.

Having carefully considered the submissions of the learned advocates for the parties and having perused the record of this petition together with the Civil Application it clearly appears that the issue with regard to regularisation of possession is still open at large before the concerned Collector. The Secretary while remanding the issue to the Collector by order dated 27.12.2006 has clearly recommended the case for regularisation on the ground that if the possession is not regularised the petitioner and his family members will suffer untold hardship since the restaurant appeared to be the only source of livelihood. It is also clear that the Secretary took into consideration orders dated 10.2.2004 and 14.1.2003 passed by the Collector whereby the encroachers were granted the relief of regularisation and they have been permitted to continue their business on the encroached land. When this is the position, it is clear that there is some discrimination meted out to the petitioner. The action of the authority also not only appears to be not in consonance with the provisions of the Bombay Police Act and in particular Section 33(x)(a) read with Section 131A but it is discriminatory more particularly when the issue is pending with the Collector with strong recommendation made by the Secretary for regularisation. In this view of the matter, I see no substance in the

grievance made by the respondents. Hence, the respondent is directed to remove the seal and permit the petitioner to carry on the business. This will be subject to the final outcome of the issue pending before the Collector. The petition is allowed. Rule is made absolute with no order as to costs. Direct Service is permitted.

In view of the judgment passed in Special Civil Application No.25334 of 2006 no order is required to be passed on Civil Application No.908 of 2007 and the same is disposed of accordingly.

(Akshay H Mehta, J.)

*mohd